

# GIBSON DUNN

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November 10, 2017

VIA ECF

The Honorable Kiyo A. Matsumoto  
United States District Court Judge  
United States District Court for the Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: United States v. Greebel, S1 15 Cr. 637 (KAM)

Dear Judge Matsumoto:

We respectfully submit this letter regarding our trial subpoenas to telecommunications companies to produce phone-call and text-message usage records.

First, having researched the Electronic Communications Privacy Act (“ECPA”), 18 U.S.C. § 2510 *et seq.*, we respectfully request the Court’s permission to amend these trial subpoenas to ensure that we are not seeking to obtain the “contents” of any telephone communications. *See* 18 U.S.C. § 2702(a); § 2510(8) (“contents” are “any information concerning the substance, purport, or meaning of [a] communication”). ECPA expressly distinguishes “records” from “contents.” *In re App. of the United States for an Order Directing a Provider of Electronic Commc’ns Serv. to Disclose Records to the Gov’t*, 620 F.3d 304, 306 (3d Cir. 2010). Section 2702(c)(6) allows for disclosure of records to private parties. 18 U.S.C. § 2702(c)(6). To that end, we propose deleting the words “including the content thereof” in the second and third requests of the subpoenas, *see* Attachment 1 (Verizon subpoena), and informing the telephone companies that we have deleted those words and do not seek the contents of any communications.

Second, other than notice that one of the telephone numbers we sought information for was active during a short period in September 2014 and has been deactivated, we have not received any further records. We understand that the telephone companies will not produce the contents of any telephone communications, voicemails, or text messages.

Finally, we explain the reasons why we are seeking these telephone records in Attachment 2, which we are filing *in camera* and *ex parte* to preserve our work product and defense strategies.

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Respectfully,

/s/ Reed Brodsky

Reed Brodsky

cc: Alixandra E. Smith, Esq.  
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David K. Kessler, Esq.